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09/691,273	10/18/2000	Robert Anthony Marin	TK-3410-US-NA	4960

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EXAMINER

SALVATORE, LYNDIA

ART UNIT PAPER NUMBER

1771

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/691,273
Filing Date: October 18, 2000
Appellant(s): MARIN ET AL.

MAILED

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GROUP 1700

Thomas W. Steinberg
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 19, 2006 appealing from the Office action
mailed October 19th, 2005.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,010,970	McGinty et al	01-2000
3,081,519	Blades et al	03-1963

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WO 98/39509	Harriss et al	09-1998
5,919,539	Bisbis et al	07-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

- (i). Claims 2-4, 7-18, and 24-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGinty et al., US 6,010,970 in view of Blades et al., 3,081,519. Alternatively, claims 2-4, 7-18, and 24-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harriss et al., WO 98/39509 in view of Blades et al., 3,081,519

The patent issued to McGinty et al., teaches flash spinning a mixture comprising 17.7 % of high density polyethylene polyethylene and spin agent consisting of a mixture of 32 % cyclopentane and 68% normal pentane (Column 12, 39-54). McGinty et al., teaches flash spinning the solution into plexifilimentary film-fibrils, which are collected to form a non-woven sheet (Column 12, 60-65). McGinty et al., teaches a spin temperature of 185°C (Column 12, 50-55). McGinty et al., teaches an improved bonded plexifilimentary sheet having high opacity and smoothness (Abstract)

McGinty et al., fails to teach the claimed spinning temperature, however, the claimed spinning temperature is known in the art. For example, the patent issued to Blades et al., teaches spinning linear polyethylene at temperatures ranging from 190-216°C (Column 13, 15-30 and Table IV). Blades et al., teaches that the formed strands exhibit good softness and strength properties (Column 13, 55-60).

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Therefore, motivated by the desire to form plexifilimentary strands having the combination of properties such as opacity, smoothness, softness, quietness and strength it would have been obvious to one having ordinary skill in the art to increase the spinning temperature in the process taught by McGinty et al., as taught by Blades et al.

With regard to the physical property limitations recited in claims 2-4, 7-18 and 28-30, although the combination of prior art does not explicitly the desired combination of crush value, surface area, Frazier Permeability, hydrostatic head, and Gurley Hill Porosity values it is reasonable to presume that said property will be met by the plexifilimentary film-fibrils of the invention of McGinty et al., in view of Blades et al. Support for said presumption is found in the use of like materials (i.e., polyethylene/normal pentane/cyclopentane) and the use of like processes (flash-spun plexifilimentary filaments at a temperature ranging from 190-216°C), which would result in the claimed property. The burden is upon the Applicant to prove otherwise

With regard to intended use of a garment, filter media or pillow cover, it is the position of the Examiner that since the prior art meets the chemical and structural limitations there is nothing to evidence that the non-woven sheet of McGinty et al., in view of Blades et al., could not function in the desired claimed capacities.

With respect to Harriss et al., WO 98/39509 see page 17, lines 23-35. Harriss et al., teaches a plexifilimentary sheet having high opacity, good visual uniformity and high delamination strength (Page 3, 20-25).

Harriss et al., fails to teach the claimed spinning temperature, however, the claimed spinning temperature is known in the art. For example, the patent issued to Blades et al., teaches spinning linear polyethylene at temperatures ranging from 190-216°C (Column 13, 15-30 and

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Table IV). Blades et al., teaches that the formed strands exhibit good softness and strength properties (Column 13, 55-60).

Therefore, motivated by the desire to form plexifilimentary strands having the combination of properties such as opacity, softness, quietness and strength (tear and/or delamination) it would have been obvious to one having ordinary skill in the art to increase the spinning temperature in the process taught by Harriss et al., as taught by Blades et al.

With regard to the physical property limitations recited in claims 2-4, 7-18 and 28-30, although the combination of prior art does not explicitly the desired combination of crush value, surface area, Frazier Permeability, hydrostatic head, and Gurley Hill Porosity values it is reasonable to presume that said property will be met by the plexifilamentary film-fibrils of the invention of Harriss et al., in view of Blades et al. Support for said presumption is found in the use of like materials (i.e., polyethylene/normal pentane/cyclopentane) and the use of like processes (flash-spun plexifilamentary filaments at a temperature ranging from 190-216°C), which would result in the claimed property. The burden is upon the Applicant to prove otherwise. With regard to intended use of a garment, filter media or pillow cover, it is the position of the Examiner that since the prior art meets the chemical and structural limitations there is nothing to evidence that the non-woven sheet of Harriss et al., in view of Blades et al., could not function in the desired claimed capacities.

(ii). Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGinty et al., US 6,010,970, or Harriss et al., WO 98/39509 in view of Blades et al., 3,081,519 as applied to claim 29 above and further in view of Bisbis et al., US 5,919,539

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The combination of prior art fails to specifically teach point bonding or pattern (i.e., linen and ribbed), however, the patent issued to Bisbis et al., teaches bonding TYVEK® Style 1422A panels/sheets, which are made from flash-spun polyethylene plexi-filamentary fibers that have been thermally bonded (Examples 1-4). Bisbis et al., describes the TYVEK® Style 1422A as having a linen texture on one side and a ribbed texture on the opposite side.

Therefore, motivated to provide a textured surface it would have been obvious to one having ordinary skill in the art at the time the invention was made to bond non-woven article of McGinty et al., or Nobbee et al., or Harriss et al., in view of Blades et al. al., in the same manner as the TYVEK® Style 1422A of Bisbis et al.

(10) Response to Argument

(i). Claims 2-4, 7-18, and 24-30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McGinty et al., US 6,010,970 in view of Blades et al., 3,081,519. Alternatively, claims 2-4, 7-18, and 24-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harriss et al., WO 98/39509 in view of Blades et al., 3,081,519

With respect to the rejection made over McGinty et al., Applicant submits that McGinty et al., does not qualify as prior art under 35 U.S.C. 103 (c), since McGinty et al., is co-assigned to the assignee of the present application, and published after the priority date of the present application. However, Applicant has not properly invoked 35 U.S.C. 103 (c). Specifically, the fact that the application and the reference have the same assignee is not sufficient evidence without required statement of “at the time the invention was made, owned by, or subject to an obligation of assignment to the same person”. Assignment records by themselves, or a mere statement of common ownership without the required statement including “at the time the

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invention was made,” are not sufficient evidence. However, the portion of McGinty et al., relied upon by the Examiner is identical to the portion of Harriss et al. As such, the Examiner’s arguments made with respect Harriss et al., are also applicable to McGinty et al.

Applicant argues a lack of motivation to combine the references of Harriss et al., in view of Blades et al., on the grounds that one of ordinary skill in the art would not be motivated to modify the teachings of Harriss et al., by employing the spinning temperatures disclosed by Blades et al. Applicant submits that on a technical level one of ordinary skill in the art would not be motivated to combine Harriss et al., in view of Blades et al., since Harriss et al., discloses improved sheets for bar code printing and the strands of Blades et al., are not disclosed to be bonded into a non-woven sheet and are rather disclosed to be soft and thus unsuitable for a printing surface, such as desired in Harriss et al. Applicant asserts that the Examiner has selected only a single spinning parameter (temperature) from Blades et al., for the combination with Harriss et al., to the exclusion of several other spinning parameters disclosed by Blades et al., including spin pressures and spin agents. Thus, Applicant asserts that the combination of references is improperly combined on a technical level.

Applicant further argues the inherency argument set forth by the Examiner with respect to the Frazier Permeability, hydrostatic head, crush value, surface area and Gurley Hill Porosity values. These arguments are not found persuasive.

With regard to Applicant’s argument that the Examiner has improperly combined Harriss et al., in view of Blades et al., on a technical level, the Examiner maintains that the combination of Harriss et al., in view of Blades et al., renders the instant invention obvious. Specifically, Blades et al., was relied upon to teach that the claimed spinning temperatures are known in the

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art and are employed with a wide variety of spin agents including hydrocarbons (column 8, 20-31). The Examiner considers the broad disclosure of hydrocarbons to include the claimed pentane and cyclopentane. As such, it is the position of the Examiner that though Applicant's claimed spin agent is not exemplified or taught as preferred in the Blades et al., reference, it would be improper to ignore such a disclosure. In other words, it is the position of the Examiner that it would be obvious to try the spin temperature of Blades et al., in the flash spinning process taught by Harriss et al., to produce a plexifilimentary fiber consistent in scope with Applicant's.

With regard to the intended use of Harriss et al., to provide a non-woven suitable to print a bar code, although Harriss et al., does disclose providing a non-woven sheet suitable for printing a bar code whereas the strands of Blades et al., are disclosed as useful for high quality woven or knitted fabrics, it the position of the Examiner that there is nothing on record to evidence that the strands of Blades et al., could not be employed to also form non-woven fabrics. Non-woven fabrics are known alternatives to woven and knitted fabrics and there is no suggestion in the Blades et al., reference that would teach away from forming non-woven fabrics from the so formed plexifilamentary strands. In fact, Blades et al., teach that the so formed plexifilamentary strands can be beaten and chopped (column 7, 16-20). The Examiner asserts that it is well known in the textile art that chopped fibers are used to form non-woven fabrics. Therefore, the Examiner asserts that on a technical level is proper to combine references.

With regard to Applicant's lack of inherency arguments as to the Frazier Permeability, hydrostatic head, crush value, surface area and Gurley Hill Porosity values, the Examiner maintains that said values would inherently be present once the plexifilimentary strands are provided. Applicant argues the Examiner's reliance on the Harriss et al., comparative example 1

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and asserts that the comparative example in the present application, which is most closely related to Harriss et al., results in a much greater surface area than instantly claimed. In response, it is the position of the Examiner that all the comparative examples reveal is that the under very similar processing conditions the surface area exhibited in Applicant's comparative example is much higher than claimed. However, Applicant has not provided any evidence to suggest that the instant resulting Frazier Permeability, hydrostatic head, crush value, surface area and Gurley Hill Porosity values are unexpected. In other words, Applicant has not shown a comparison between the relied upon examples and the instant invention produced under the claimed conditions. Absent such evidence, the Examiner asserts that the Frazier Permeability, hydrostatic head, crush value, surface area and Gurley Hill Porosity values are inherent to the plexifilimentary strands provided by the combination of Harriss et al., in view of Blades et al.

(ii). Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGinty et al., US 6,010,970, or Harriss et al., WO 98/39509 in view of Blades et al., 3,081,519 as applied to claim 29 above and further in view of Bisbis et al., US 5,919,539


The rejection of claim 29 from which claims 21-23 are maintained as set forth above and Applicant has not provided any new arguments for which to consider.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

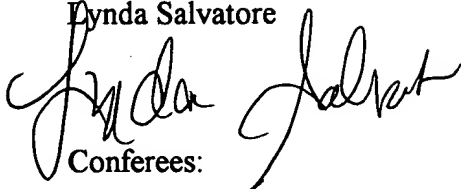
Respectfully submitted,



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